App. F. IX-4

Previous References 1941. (Jaffna)

File No. 212.

Serial Nos. 1-6 7

Later References. Jaffna Sec 116/41.

PRESERVED

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 6.

Part B for January 1941

SUBJECT.

Appeal on the file of the District Land Settlement Officer regarding recovery of lease amount and bank repairs charges in respect of Pesalai Nanaddan Village belonging to Sri Aranganathan.

No 1467 of 9-1-1941.

The Jaffna Commissioner

WD 0573—GPB—22,500—12-9-39

Forwards a copy of the legal opinion in the matter for necessary further action.

9-1-41

3720/640

G. R. S. APP. F. III—1]

GENERAL AND REVENUE SECRETARIAT.

(Mugs)

NOTES. File No. 22-1/39

FILE HEADING.

Appeal No A.S. 328/39 in the [illegible] District Court
[illegible] regarding [illegible] of lease of [illegible] and tank, Pajan-
chayas in Gollabettupayanur Village [illegible] Appeal No. 328

FROM

The Mugs' [illegible] Chairman

No. C 2159/39.40 Dated 13.11.40 Received 14.12.40

Diary No. 918	Encls.	Spare copies	Serial No. 1
		1 file & records	

BRIEF ABSTRACT OF LETTER

With reference to G.O. dated 7.11.1939, Para 4
legal advice in the matter of preferring appeals in
the above case.

NOTES AND ORDERS.

1 The Law Secretary may be requested to give
legal advice in the matter

BJS
16/11
Law Secy

2 [illegible]
16/11

3 The Govt Advocate-[illegible]

Consulted

14/11/40

20/11

Law Secy

NOTES—First Sheet

WD 077 —GPB—5,000—11-9-40

2
2 5/12/40
23/12

Yesudeth Jayaram Village tank Repairs — Appeals -

File No. 212 of 1940. | General and Rev Secretariat

4 The R.A. may be filed on the advice of the local Lawyer. The G.A. may be consulted with respect to the S.A to the High Court

Gen Secy (M.C.)

23/12/40

For perusal & signature

Hon Pres

(Hon Mr. J)

1st member)

23/12

23/12/40

Hon Legal

H.C. office by phone that the action may be taken file R.A as suggested BR 2 p.m. 23/12

A draft to the Hon'ble BR 23/12 GS 23/12

DEC 23 1940 C.G.O.

No 1345 dated 23.12.40

The Hindu Comm

It is that the Revised Appeal paper A is agreed upon & action taken thereby could be finished at once and thereby be granted the question of filing the Second appeal against the judgment & the 15 court action will be communicated to him in due course.

Submitted for perusal the file will be sent back to the Revenue Section for action with reference to the letter

Serial No.

portion in para 4 of the Notes Supra

B.T. 23/12/40

R.O. No. 16/40-41 dt. 28/12/40

To forwarded with compliments to the Govt. Advocate in Madras for perusal & return.

23/12/40

R.O. No. 576/40-41 dt. 23.12.40

R.O. No. 51/40-41 dt. 31.12.40

Returned with compliments.

Except the copies of the judgments of the Courts of the Subordinate Judge and the District Judge of Chittoor and of the lease deed, there are no other papers such as copies of pleadings and of evidence of either kind - oral or documentary. But, as it is mentioned that the time for filing a Second Appeal will expire on the 10th January 1941 I have recorded my opinion which is that a Second Appeal need not be filed. I may add in this connection that the opinion of the learned counsel for the Mutt at Chittoor is different but since no reasons are given, I have not been able to appreciate his view point.

The finding of fact by the Sub Court of Chitto was that repairs were effected in the year 1931, the year prior to the execution of the lease deed and its taking effect. The learned Judge observed that it was not disputed, vide: lines 9 and 10 on page 6 of the printed papers. This finding was concurred in by the first court of appeal, vide: line 5 in para 2 on page 8 thereof. So, the argument for the Mutt has to proceed on the basis that repairs were effected

th

NOTE—Contn She

Serial No.

the year 1931.

The relevant covenant of the lessees runs as follows:-

Clause (d): "To pay for all costs necessary for effecting the repairs to the tank situate in the said premises and to always keep it in repair". (The underlining is mine).

The clause could not have been intended to apply to what had already taken place when the words would have been something like these: "having effected the repairs" and not for effecting which connotes something to be done at some time thereafter. It is clear from paragraphs 1 to 12 of the notes in Muz. File No. 62-31/ Sls. 1-20 that the Government of Madras had made a claim against our Government for the amount and that the then lessees had been notified by the Deputy Commissioner, Kolar District, in his letter dated 29-4-1932 of their liability to pay the amount. If it was intended, as is now contended on behalf of the Mutt it was, that the present lessess should pay the amount, nothing was easier than to have ~~expressed~~ mentioned it expressly in the lease. Far from that having been done, the recital is about future repairs and not past ones.

The second branch of the same contention is that the liability comes under the phrase "to always keep it in repair". The same difficulty stands in the way here also in addition to another one namely that the phrase "Keeping it in repair" means not effecting heavy repairs costing thousands of rupees but doing small bits here and there costing some tens.

The

The idea conveyed is the same as is meant in the - lease deeds of houses in towns where "making the - annual repairs" is quite a common expression understood by everybody.

15 I do not think a past liability of the kind can be squeezed in under any portion of the clause. To quote the words of the learned District Judge, it is "prima facie unreasonable".

16 What might have led to the action being taken against the present lessees is the opinion contained in - para 28 of the file Muz. 62-31, dated 5-4-1932. I beleive action was contemplated on the original contract of lease which was abrogated as having been - ultra vires of the then Matadhipathi. The document evidencing the lease is not available in the file and I do not know whether the claim on that contract subsequently cancelled, presumably at the instance of the Mutt, will be in time. That may need fuller examination on a complete set of materials which led to the lease and its subsequent cancellation.

Government Advocate.

H/31.12.40.

17) The above opinion may be communicated to the M.C.

31/12/40

2nd Member)

2.1.41

A draft to the M.C is submitted.

2/1/41

OFFICE OF THE SECOND MEMBER OF COUNCIL, 2 JAN 1941 No. 6861

GENERAL SECRETARY. 31 DEC 1940

GENERAL SECRETARY. 2 JAN 1941

TYPING SECTION NOTE Comm. 2 JAN 1941 REVN. & REV.

Subsidiary Office C

File No. 212 of 1940. General and Secretaria

	Serial No.
Letter dated 2.1.1941 from the Municipal Commissioners asking the Corporation whether in the matter for necessary, further action	3
Letter No. 2159 dated 2.1.41 from the Municipal Commissioners requesting immediate orders in the matter of filling Municipal Councillors vacancies	4

2nd ~~Letter~~ A copy has been sent to the Municipal Commissioners and the enclosure copy to be kept, returned to him, on 2.1.41. No further action is called for. Subsidiary Office

3/1/41

3.1.41

2.1.41

Serial No.

Letter No C 2159/39-40 dated 27-12-1940 from the Mwz. Comr requesting among other matters early orders about the filing of the second appeal to the High Court, Madras in the matter of Erra Bettayanur village belonging to Sri Avani Math.

The connected file was sent on 23-12-40 to the Govt Advocate for favour of opinion on return of the same, the lease copy required by the M.C. will be returned.

Govt
3/1

Returned with compliments.

The main file relating to the matter is also returned herewith, as desired, with opinion.

Government Advocate.

H/31.12.1940.

31 DEC. 1940

NOTE—Contn. Sheet.

Elakkattuppuram Appeal case

Chief File No. 212 - of 1940. | General and Revenue Secretariat

Serial No. 3

Letter No C 2154/1940 & 6.1.41

From the Magistrate Court in Alathur with reference to your letter dated 2.1.41, requesting further instructions in the matter of pursuing the First Appeal in the District Court,

It The First Appeal has been filed on 3.1.1941 in the District court Chittur at a cost of Rs 130- The Second Appeal to the High court is advised not to be filed. The Vakil at Chittur who has filed the First Appeal states that the First Appeal will be of no use in case the Second Appeal is not filed, and that it will have to be withdrawn The Magistrate Commissioner requests further instructions in the matter. The last date for filing the Second Appeal is 12th January 1941.

The file may be sent to the Govt Advocate for further advice

Law Secretary

(Comments)

BT 7.1.41. GS 7/1/41

7/1/41

GS. Secretary -

7/1

7/1

GENERAL SECRETARY. 7 JAN. 1941 140

45-5-1

7 JAN. 1941
4083
G.

Serial No.

Rev. 617/40-7
dt 7.1.41

U.O. No. 68
40-41
dt 8.1.41

e For favour of remarks
Govt Adv
MC)

Hm
2
7/1/41

74 Returned with compliments.

Except a copy of the appeal memo. filed in the Court of the District Judge of Chittoor, there are no other papers relating to that appeal in the file, and as I had no opportunity of seeing them at any stage till now, I am unable to give my considered - view on its strength.

But the letter of the learned Vakil at Chittoor makes it fairly clear that the point involved in the suit in the Sub-Court and that in the Munsiff's - Court is one and the same and that two suits in - different courts came to be filed probably on account of difference in the amounts involved affecting the limits of their respective jurisdictions.

If my opinion given on 31-12-1940 should still hold good -- I may add that there are no additional papers in the file to modify it -- the Regular Appeal said to have been filed on the 3rd instant - continues to be unnecessary.

Mark Wakefield Sanappa
Government Advocate.

H/8.1.41.

I think there is no need to withdraw the case. It may be argued on its merits on a decision taken. As the Govt Advocate is of the opinion that no S A need be filed, his suggestion may be adopted.

Hm
2
8/1/41

Govt Adv
MC
Secy
Secy
2 members

SECY LAW DEPT GOVT OF MADRAS

OFFICE OF THE SECRETARY TO GOVT OF MADRAS

6461

NOTE—Contn. Sheet.

GENERAL SECRETARIAT

9 JAN. 1941
189.

File No. 31 7mm of 1945.

General and Secretar

Serial No.

6

13/1

Immediate

Aug 21240 -/

Camp - Chickmagalur

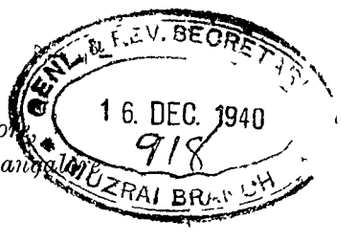
No. C.2159/39-40.
Encl. One file.

OFFICE OF THE ~~REVENUE~~ COMMISSIONER
IN MYSORE.

~~xxxxxx~~ *dated*....13th December.*1940*.

FROM

Rukn-ul-Mulk
S. ABDUL WAJID, ESQ., B.A.,
~~Revenue~~ Commissioner in Mysore,
Bangalore.



To

J. Appaji Gowda, Esq., B.A.(Hons.),
Secretary to Government of His Highness
the Maharaja of Mysore,
General .....*Department, Bangalore.*

Subject:— Re: appeal No.A.S.328/39 on the file of District Court, Chittoor, regarding the recovery of lease amount and tank repairs charges in Yerrabettayyanur village belonging to Sri Avani Mutt.

With reference to G.O.No.1000-2/Muz.241-36-4 dated 7th November 1939 approving the action taken by me for filing an appeal in the District Judge's Court at Chittoor, against the order of the Subordinate Judge, Chittoor, disallowing the claim of the Sri Avani Mutt for the recovery of tank repairs charges from the lessees, I have the honour to forward herewith a copy of letter No.A2.C.1509/33-34 dated 18-11-1940 with its enclosure, received from the Deputy Commissioner, Kolar District intimating that the appeal was dismissed by the District Judge, and requesting to consult the Government Advocate and issue instructions in the matter of preferring an appeal to the High Court of Madras, or otherwise.

2. The Subordinate judge, Chittoor, dismissed the claim for Rs.1086-8-0 on account of tank repairs charges, on the ground that the liability did not arise subsequent to the suit lease and that the lessees were not liable to pay therefor and that the repairs to the tank had been completed prior to the date of the lease (Vide copy of judgement in O.S.19 of 38). An appeal was filed in A.S.No.328/39 to the District Judge's Court, Chittoor and it was also dismissed on 11-9-1940. During the pendency of the above suit, another suit for the recovery of an sum of Rs.1000/- paid towards the tank repairs, was filed in O.S.365 of 38 on the file of the District Munsiff's Court,

Chittoor. But this suit which was kept by pending the result of the appeal in the District Court at Chittoor, was also dismissed on 4-10-1940 following the decision in the District Court, Chittoor.

Mr. J. Krishna Rao Garu, Chittoor, the Vakil, is of opinion that there is a fair chance of winning both the dismissed appeal and the suit, if appeals are preferred to the High Court of Madras and the District Judge's Court, Chittoor, respectively, and that if desired he will consult the Government pleader, Madras and intimate his views.

4. The Vakil, while sending copies of judgments in the above suits and appeal, with his letter dated 3-12-1940 intimates that the appeal against the judgment of the District Munsiff's Court will have to be filed before 24-12-1940, and that the second appeal to the High Court, Madras, against the judgment of the District Court, Chittoor, will have to be filed before 10-1-1941.

5. The Deputy Commissioner in his letter No.A2.C.1509/33-34 dated 6-12-1940 while submitting a copy of the Vakil's letter solicits orders in the matter.

6. In view of the unanimous judgments of the three courts (Subordinate judge, District Munsiff and the District Judge, Chittoor) disallowing the claim of the Mutt for recovery of the tank repairs charges from the lessees, I am not sure if there are ground for filing appeals. I request that the views of Government in the Law Department, may kindly be obtained and furnished early in the matter of preferring appeals or otherwise.

7. A copy of the lease deed and copies of judgments of the three courts are sent herewith.

I have the honour to be,
Sir,
Your most obedient servant,

Muzrai Commissioner.

T.S.P.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat.

Dated, Bangalore,.....23rd December 1940.

No.S.1345/Muz.212-40-2

FROM

The Secretary to the Government of His Highness the Maharaja of Mysore.
General Department.

To

The Muzrai Commissioner in Mysore,
Bangalore.

Sir,

With reference to your letter No.C.2159/39-40 dated 13th December 1940 regarding the appeal No.A.S.328/39 on the file of District Court, Chittoor about the recovery ofthe lease amount and tank repair charges in Yerrabettayyanur village belonging to Sri Avani Mutt, I am directed to state that the regular appeal against the judgment of the District Munsiff's Court may be filed at once on the advice of the local lawyer and that orders regarding the question of filing the second appeal against the judgment of the District Court, Chittoor, will be communicated to you in due course.

I have the honor to be,
Sir,
Your most obedient servant,

For Secretary to Government,
General Department.

Appendix F G—1]

SUBJECT.....

.....

.....

Immediate

Section Mis

File No. 212-40

Serial No 2 —

Diary No. of letter replied to.....

No. 1345

To

General and Revenue Secretariat

( )

the *19* .

The Municipal Commissioner

Fort.

Date of issue.. 23-12-40

With reference to your letter

No C 215/9/39-40 of 13/12/40

~~No A.2.C.1579/33-74 dated 15th~~

Signed by M.S.K.V. Iyer

regarding appeal No A.S. 328/39

in the file of the court chittanabis

The receipt of 1 Tamil copies in

respect of the lease amounts of Yesubetta

A village

Agraharam belonging to Sri Adam Hut.

I am directed to state that the

Regular Appeal was against the

judgment of the D. Munsiff's court

at once

may be filed on the advice of the

Govt. Lawyer and that Orders

Enquiries be filed

regarding the Second appeal.

ist of enclosures . .. .

opied by . . ..

xamined by . ...

WD 03695 -GPB—30,000—29 1 40

against the judgment note to
Lieut. Chilton will be communicated
to you shortly. ~~I am to add that the~~
~~Advocate of the Navy may if necessary be heard to support the appeal in this~~

Thereof

for
Sec'y

for Secretary
of War
23/12

SUBJECT.....

.....

.....

Section Marg

File No. 212. (co)

Serial No. 24

Diary No. of letter replied to 918

No. 1369/Gen/Papers.

To

General and Revenue Secretariat

( )

the *19* .

The Manager Corn in Mgh

Sir,

Date of issue 2-1-1941

Signed by S. K. V

~~took~~ ~~reference~~ to the contents of this office letter No 1345/Marg 212.(co) dated 23.12.40 regarding appeal (leave) against the judgement in the Court Chittoor about the Sandy, in the lease amount and tank repairs charges in Yerra. Kottapuram village belonging to the Sri Bhavani Mutt, I am directed to forward herewith a copy of the legal opinion in the matter for necessary further action &

List of enclosures . . . . . .

Copied by . . . . . .

Examined by . . . . . .

The enclosures to your letter
are returned herewith.

Thanks

for Paul Leyhausen
HA
2/1/61

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat.

Dated, Bangalore, 2nd January 1941.

No. 1369 Ex Papers
Huz 212-40-2

FROM

The Secretary to the Government of His Highness the Maharaja of Mysore.
General Department.

To

The Huzrai Commissioner in Mysore,
Bangalore.

Sir,

In continuation of this office letter No.1345/Huz.212-40-2 dated 23rd December 1940 regarding appeal (second) against the judgment of the District Court Chittoor about the recovery of the lease amount and tank repairs charges in Yerrabettayyanur village belonging to the Sri Avani Mutt, I am directed to forward herewith a copy of the legal opinion in the matter for necessary urther action.

The enclosures to your letter are returned herewith.

I have the honour to be,

Sir,

Your most obedient servant,

for Secretary to Government,
General Department.

38 on the file
Sub-Inspr, Chittoor,

Klm
2-1-61

C 21591/39—160

7/12/40. from the Mysore Commissioner in Mysore.

The manager to kindly acknowledge the receipt of this document.

GS
3/12

Received four enclosures contain copy of the Cease dead etc at about 5.30 P.M.
31/12/1940

C: 13]

No. C. 2159/39-40. IN MYSORE,

ENCL. One. *Bangalore, ...2nd.....January.....1941.*

212-40-84.

FROM

RUKN-UL-MULK
S. ABDUL WAJID, B.A.,
Muzrai Commissioner in Mysore.

985

To

J.....APPAJI GOWDA, ESQ.,...B.A.....(Hons.),
Secretary to the Government of His Highness
the Maharaja of Mysore,
.....General...*Department.*

SIR,

Sri Avani Mutt - Errabettayyanur - O.S. 365 of 38
on the file of District Munsiff's Court, Chittoor,
Appeal to District Court, Chittoor.

---:o:---

In continuation of my letter No.C.2159/39-40 dated 28th December 1940 intimating the action taken on the above subject, I have the honour to forward herewith a copy of letter dated 1st January 1941, received from Mr. J.Krishna Row, Vakil, Chittoor, stating that the appeal to the District Court, Chittoor, will be of no use unless a Second Appeal is filed to the High Court, as the latter would operate as Res Judicata against the former and soliciting orders to file the Second Appeal to the High Court on or before 6th January 1941.

2) I request that orders of Government in the matter of filing the Second Appeal to the High Court may kindly be obtained and communicated by phone immediately, as instructions have to be issued by wire to the Vakil, Chittoor.

3) The printed copy of the Judgment in A.S.328/39 on the file of the District Judge, Chittoor, sent with my letter No.C.2159/39-40 dated 14th December 1940 may be kindly returned for being sent to the Vakil.

I have the honour to be,
Sir,
Your most obedient servant.

Muzrai Commissioner.

BRN.

Letter dated 1st January 1941 from Mr. T.Krishna Row, B.A.,B.L., Vakil, Chittoor, to the Muzrai Commissioner in Mysore, Bangalore.

Sub:- Sri Avani Mutt, - Errabetayyanur - O.S.365/38 on the file of the Dist. Munsiff's Court - Chittoor - Appeal to the District Court.

I beg to acknowledge the receipt of your letter dated 27-12-40. On 3-1-41 when the Court re-opens, the first appeal to the District Court will be filed against the judgment in O.S.365 of 1938.

This appeal will be of no use unless a 2nd appeal is filed agains A.S.No.328 of 39 to the High Court, as this would operate as Res Judicata against the first appeal. The 2nd appeal must be filed on or before 6-1-41. I request you therefore to kindly advise me immediatel to file the 2nd appeal to the High Court and also return to me the printed copy of the judgment in A.S.328/39, which I sent to you.

" Copy."

M. N. Srinivas.

For Muzrai Commissioner.

BRN.

No. C.2159/39-40.

Encl: One.

Office of the Muzrai Commissioner in Mysore,
Bangalore, Dated 27th December 1940.

Jawab 212-40-

From

Rukn-ul-Mulk S. ABDUL WAHID, Esq., B.A.,
Muzrai Commissioner in Mysore.

GENL & REVENUE SECTT. 30 DEC. 1940 978

To

J. APPAJI GOWDA, ESQ., B.A. (Hons.),
Secretary to the Government of His Highness
the Maharaja of Mysore,
General Department.

GE 30 DEC. 1940

Sir,

RE: Avani Mutt - Errabettayanur - C.S.365/38
on the file of District Munsiff, Chittoor
Appeal to the District Court, Chittoor.

* * * * *

With reference to your Telephone message on 23rd December 1940 and letter No.1345/Muz.212-40-2 of even ~~xxxxxx~~ date conveying sanctio to file the regular appeal in the District Court, Chittoor, against the Judgment of the District Munsiff, Chittoor, regarding the above, I have the honour to state that an Express Message was sent to Mr. J. Krishna Row, B.A., B.L., Vakil, Chittoor, immediately, after the telephone message was received from the Secretariat on 23rd December 1940 to file the appeal the same day and to intimate the action taken. A copy of his letter dated 25th December 1940 acknowledging the receipt of the Express Telegram late in the evening and stating that the appeal will be filed on 3rd January 1941 as there is time till then, is enclosed for information.

2) I request that early orders of Government may kindly be obtained regarding the filing of the Second Appeal to the High Court, Madras, referred to in your letter.

3) The copy of the lease deed sent with my letter No. C.2159/39-40 dated 14th December 1940 may be kindly returned immediately as it is wanted by Mr. J.Krishna Row before 3rd January 1941.

I have the honour to be,
Sir,
Your most obedient servant,

Muzrai Commissioner.

BRN/3.

Letter dated 25-12-1940 from Mr. J.Krishna Row, B.A.,B.L., Vakil, Chittoor to the Muzrai Commissioner in Mysore, Bangalore.

-----:o:------

Subject:- Avani Mutt -- Errabetyyanur-- O.S.365/38 Chittoor-Appeal to the District Court, Chittoor.

I beg to acknowledge the receipt of your telegram and the communication dated 23-12-1940. Your telegram was received late in the evening of 23-12-1940. So the appeal against the Judgment in O.S.365/38-District Munsiff's Court Chittoor could not be filed on the very day. But there is time to file it on 3-1-1941, when the District Court re-opens after X'mas Holidays. It willbe sure be filed on that day. Along with my letter to the Deputy Commissioner of Kolar I had enclosed printed copies of the Judgment and a typed copy of the lease deed for reference. In case they have been sent to your office, I request you to kindly send them back to me.

"Copy."

K.M. Ramarao

For Muzrai Commissioner.

Muz 212-40-5

OFFICE OF THE MUZRAI COMMISSIONER
IN MYSORE,

No. C. 2159/39-40

ENCL. Two.

Bangalore, 6th January *194*1.

598

FROM

RUKN-UL-MULK
S. ABDUL WAJID, B.A.,
Muzrai Commissioner in Mysore.

GENL & REV. SECRETARIAT
6 JAN. 1941
011
MUZRAI BRANCH

To

J. Appaji Gowda, Esq., B.A.(Hon.),
Secretary to the Government of His Highness
the Maharaja of Mysore,
General *Department.*

SECRETARY.
6 JAN.

SIR,

Regarding the filing of Second Appeal to the High Court, against Judgment in A.S.328 of 39 on the file of the District Judge, Chittoor.

With reference to your letter No.1369/Muz.212-40-4 dated 2-1-'41 forwarding a copy of the legal opinion in the above matter, I have the honor to forward herewith a copy of letter dated 5-1-1941, received from Mr. J. Krishna Rao, Vakil, Chittoor, stating, for reasons mentioned therein, that in case the Second Appeal to the High Court is not filed, the First Appeal filed in the District Court, Chittoor, on 3-1-1941, against the judgment in O.S.365/38 on the file of the District Munsiff, Chittoor, will be of no use; and that the First Appeal which has been filed at a cost of Rs 130 will have to be withdrawn, etc., and to request that further instructions of Government, in the Law Department, may be kindly obtained and communicated urgently.

2. Mr. Krishna Rai intimates that the last date for filing the Second Appeal, is 12th January 1941; and requests instructions two days previous to that date.

I have the honor to be,
Sir,
Your most obedient servant,
Muzrai Commissioner.

kkr

Letter dated 5-1-41 from Mr. J. Krishna Rao, B.A., B.L., Vakil, Chittoor, to the Muzrai Commissioner in Mysore.

Subject:- Avani Mutt Errabetayyanoor village A.S.No.328/39 second appeal High Court.

On the receipt of the telegram dated 23-12-1940 and the letter dated 23-12-1940 advising me to file the appeal to the District Court against the judgment in O.S.365/38 on the file of the District Munsiff's Court Chittoor. I preferred the appeal on 3-1-1941 when the Courts reopened after the Christmas holidays. Subsequently I received your communication dated 3-1-1941 on 4-1-1941 and the enclosed opinion of the learned Governm Pleader advising me not to file the second appeal to the Madras High Court against the judgment in A.S.328/39 District Court which was an appeal agai the disallowed claim of the Mutt in O.s.19/38 Sub Court. In both cases th question involved is the claim of the Mutt to recover the amount of Rs 2086 spent for the repairs of the tank named Jumbucheruvu belonging to the vill of Errabetayyanoor. Of the said amount in O.S.19/38 Sub Court, a sum of Rs 1086-0-0 is involved and in O.S.365/38 on the file of the District Munsiff's Court is depend upon the final judgment in O.S.19/38 Sub Court, tha as such the judgment in A.S.328/39 would operate as rejudicata in O.S.365/ District Munsiff's Court, and that the filing of the appeal against the judgment in O.S.365/38 would be of no use without the second appeal being filed. Now the first appeal against the judgment in O.S.365/38 has been f at a cost of about Rs 130 for Court fees as per instructions, We have to forego this sum and withdraw the appeal, in case the second appeal is not filed.

I have herein enclosed herein a copy of the appeal memo in O.S.365/38 and a perusal of the same would make it clear that the question as to when exactly the repairs were executed was not in issue at all. On the other hand the defendants have admitted in their prior written statements that th tank repairs were effected after the lease came into effect.

The clause relating to the tank repairs in the lease deed has to be interpreted in the light of surrounding circumstances such as the persistent demand for the same in the several notices and the absence of any denial of liability on the part of the defendants. Hence I think that it would be advisable to file a second appeal as otherwise the appeal now filed in O.S. 365/38 at a cost of Rs 130 will have to be dismissed by reason of the decisio in A.S.328/39 which would oparate as rejudicata if no second appeal is preferred against it.

a sum of Rs.1000/- is involved. As I wrote to you in my lett dated 1-1-41 the judgment in O.S.365/38 District Munsiff's Court

GOVERNMENT F HIS HIGHNESS THE MAHARAJA OF MYSORE.

IMMEDIATE.

General and Revenue Secretariat.

No. 1467/Misc 212-40-6 *Dated, Bangalore, ..9..I..January.. 1941.*

FROM

The Secretary to the Government of His Highness the Maharaja of Mysore.
General Department

To

The Muzrai Commissioner in Mysore,
Bangalore.

S i r,

With reference to correspondence ending with your letter No.C.2159/39-40 dated 6th January 1941 regarding the filing of Second Appeal to the High Court of Madras against Judgment in A.S.328 of 1939 on the file of the District Judge at Chitoor, I am directed to forward herewith a copy of the legal opinion in the matter for necessary further action.

I have the honour to be,

S i r,

Your most obedient servant,

For Secretary to Government
General Department

Appendix F G—1]

SUBJECT.....

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Diary No. of letter replied to... ...1 1 2 1 ... ...

General and Revenue Secretariat

( )

the 19 .

Date of issue... ....

Signed by ....

List of enclosures . . .. ..

Copied by . .. .

Examined by .. ..

Section

File No.

Serial No 6

No.

To

The Municipal Commissioner Madras

Ltd,

With reference to Collector's correspondence ending with your letter No C 2159/39-40 dated 6.1.1941 regarding the filing of Second Appeal to the High Court Madras against judgment in A.S. 328 of 1939 on the file of the Subordinate Judge at Chittoor. I am directed to forward herewith a copy of the legal opinion in the matter for necessary further action.

I have the honour to be

Sir

Your most obedient servant

Under Secretary to Government

WD 03695—GPB—30,000—29 1 40

C.2159/40-41. OFFICE OF THE MUZRAI COMMISSIONER IN MYSORE,

Cl: One.

Bangalore, 17th January 1941.

Muz 212-40-7 63

FROM Rukn-ul-Mulk
S. ABDUL WAJID, Esq., B.A.,
~~K. VENKATARAMAN, Esq., B.A.~~
Muzrai Commissioner in Mysore,
Bangalore.

GENL. & REV. SECRETARIAT
20 JAN. 1941
1078
MUZRAI BRANCH

To
Rao Bahadur Appaji Gowda, Esq., B.A. (Hons.),
Secretary to Government of His Highness
the Maharaja of Mysore,
.....General.....*Department,*

GENERAL SECRETARY.
20 JAN. 1941

SIR,

Filing of the Second Appeal to the High Court of Madras against Judgment in A.S.328 of 39 on the file of District Judge, Chittoor.

With reference to your letter No.1467/Muz.212-40-6 dated 9th January 1941 forwarding a copy of the legal opinion of Government on the above subject, I have the honour to forward herewith for the information of Government, a copy of letter dated 14th January 1941 received from Mr. T. Krishna Row, Vakil, Chittoor, intimating that he is not filing the Second Appeal to the High Court of Madras, and that he is withdrawing the appeal filed in the District Court, against the Judgment in O.S. 365 of 38 on the file of the District Munsiff, Chittoor.

I have the honour to be,
Sir,
Your most obedient servant,

S. Abdul Wajid.

Muzrai Commissioner.

klu

Letter dated 14-1-1941 from Mr. [illegible] Krishnaswamy, B.A.,B.L., Chittoor, to the Muzrai Commissioner in My[illegible], Bangalore.

Ref: Second appeal against A.S.323/ of 39 Dan[illegible] of Perrabetta[illegible] village of [illegible] Mandi[illegible].

I am not filing the second appeal against A.S.323 of 39 as instructed by you. As stated in the copy of the legal opinion sent to you the appeal already filed against the judgment in O.S.365 of 38 has now become unnecessary. The said appeal is now numbered and notice is ordered. If the said appeal is not now withdrawn, and notice is allowed to be served on the respondents, we will have to pay costs to the respondents. In order to avoid this I am withdrawing the appeal filed in the District Court against O.S.365 of 38. It is however unnecessary to repeat here that the judgment in A.S.323 of 39 operates as res judicata and the appeal against O.S.365 of 38 now filed will have to be dismissed.

"Copy."

M. N [illegible]

for Muzrai Commissioner.

Serial
No.

Subd for perusal

21/1/41

GENERAL SECRET
467

NOTE—Comm Sh